IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SUR TAX REFERENCE No 5 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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COMMISSIONER OF INCOME-TAX

Versus

MC GAW RAVINDRA LABS. (I) LTD.

Appearance:

1. SUR TAX REFERENCE No. 5 of 1986

MR BB NAIK for MR MANISH R BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 24/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

At the instance of the revenue, the following question of law has been referred to this court for its opinion by the Income tax Appellate Tribuna, Ahmedabad Bench 'A' under the provisions of sec. 256(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

"Whether the Tribunal has been right in law in holding that the assessee is entitled to claim credit for depreciation, in excess of amount actually allowed, as a reserve for the purpose of computation of capital under the Sur-tax Act?"

2. We have heard learned advocate Shri B.B. Naik appearing for the revenue. Nobody has appeared for the assessee, though the respondent assessee has been duly served.

3. Upon perusal of the question, we find that there is some ambiguity in the question. It is not certain whether the amount of depreciation actually allowed as per the provisions of the Act or the amount of depreciation recorded in the books of accounts is in excess. All possible efforts were made by the learned advocate appearing for the revenue to ascertain the correct position but he too is unable to inform us the correct position.

4. In view of the fact that we are not having complete facts, we decline to answer the question. However, we direct the Tribunal to consider the judgement delivered by this Court in the case of Anup Engineering Ltd. v. Commissioner of Sur-tax/Income-tax, 211 ITR 196 and take appropriate decision after considering the facts of the case and the ratio laid down by this Court in the said judgment.

The reference thus stands disposed of with no order as to costs.

(A.R. Dave, J.)

(D.A. Mehta, J.)

(hn)